

IN THE UNITED STATES PATENT AND TRADEMARK OFFICE

In re Application of:) Art Unit: 1643
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KEHOE, et al.) Examiner: DUFFY, B.
)
Serial No.: 10/575,618) Washington, D.C.
)
Filed: July 17, 2007) December 10, 2009
)
For: COMBINATION THERAPY) Docket No.: KEHOE=1A
FOR CANCER)
) Confirmation No.: 1340

ELECTION WITH TRAVERSE

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S i r :

In response to the restriction requirement mailed September 10, 2009, please enter the following response.

1. Applicants elect group I with traverse.
2. As the anti-estrogenic steroid agent species (OA §6), applicants elect tamoxifen.
3. The examiner concedes that claims 1-3 and 7-31 are linking claims (OA §4), i.e., the restriction is conditional on non-allowance of the linking claims.

The examiner argues that claim 1 is obvious over Baughman USP 6,627,196, who teaches the combination of tamoxifen (as anti-estrogenic steroid agent) and trastuzumab (as immunological agent). Trastuzumab (Herceptin) is a monoclonal antibody that interferes with HERZ/neu receptor (Exhibit 1).

The restriction is incomplete in that it fails to explain how the other linking claims, in particular claim 3, are obvious over the art relied on. Under PCT Administrative Instructions, Annex B, paragraph (c), the onus is on the examiner to establish a posteriori lack of unity, not an applicant to prove unity.

By preliminary amendment filed on even date herewith, applicants amend claim 1 to incorporate the limitations of claim 3, i.e., that the immunological agent is an immunogen. This distinguishes Baughman, in which the immunological agent is an

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antibody. Hence the restriction should be withdrawn.

4. If the restriction is maintained, considered claims 1-2, 4-6, 13, 14, 17-31 and new claims 41 and 45-47 should be examined. Note that the immunogen comprising a MUC1 epitope does not foreclose it also comprising the carbohydrate epitope of claims 5 and 6.

Respectfully submitted,

BROWDY AND NEIMARK, P.L.L.C.
Attorneys for Applicant

By: 
Iver P. Cooper
Reg. No. 28,005

624 Ninth Street, N.W.
Washington, D.C. 20001
Telephone: (202) 628-5197
Facsimile: (202) 737-3528
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